



**Littler Mendelson, P.C.**  
One Newark Center, 8th Floor  
Newark, New Jersey 07102

Glenn J. Smith  
Office Managing Shareholder

Frank A. Custode  
973.848.4712 direct  
973.848.4700 main  
973.741.2309 fax  
[fcustode@littler.com](mailto:fcustode@littler.com)

October 1, 2010

**VIA ECF AND OVERNIGHT MAIL**

Honorable Faith S. Hochberg, U.S.D.J.  
United States District Court, District of New Jersey  
Martin Luther King, Jr. Federal Building  
50 Walnut Street  
Newark, New Jersey 07101

**Re: Waste Management of New Jersey, Inc. v. Teamsters-Employers  
Local 945 Pension Fund, *et al.*  
Civil Case No. 10-cv-3984 (FSH) (PS)**

Dear Judge Hochberg:

We write in response to Defendants' letter of October 1, 2010. Defendants properly seek a hearing, pursuant to this Court's order of September 27, 2010, on Waste Management's motion for a preliminary injunction to enjoin the arbitration that had been scheduled to begin on September 29, 2010, before Arbitrator Leibowitz and pursuant to the Fund's June 2009 Resolution.

Defendants also request, however, a hearing on whether "Waste Management is obligated to proceed to arbitration before Arbitrator Wellington Davis pursuant to the resolutions adopted by the Trustees prior to December 2008." The Court lacks subject matter jurisdiction to decide that question, because Defendants have never initiated, or even threatened to initiate, arbitral proceedings against Waste Management that are before Arbitrator Davis and pursuant to the June 2007 Resolution. Such arbitral proceedings are therefore not addressed in Waste Management's pending motion for a preliminary injunction. Even more importantly, such hypothetical arbitral proceedings are nowhere addressed in Waste Management's Complaint. Accordingly, there is no case or controversy that raises the question of whether "Waste Management is obligated to proceed to arbitration before Arbitrator Wellington Davis pursuant to the resolutions adopted by the Trustees prior to December 2008," and the Court lacks subject matter jurisdiction to decide that issue.

Respectfully submitted,

/s/ Frank A. Custode

Frank A. Custode

FAC/pnk

cc: Susan Katz Hoffman, Esquire  
Ronald E. Richman, Esquire (via email)  
Melissa Flax, Esquire  
Sara Solfanelli, Esquire